



BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

Opinion of the Court Below.

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit, rendered on December 13, 1941, appears at page 191 of the record, and is reported in 124 Federal (2d) 38.

II.

Jurisdiction.

A statement of the grounds of jurisdiction is contained in the petition. The United States District Court for the Northern District of Texas, Amarillo Division, dismissed respondent, Williams' petition in Bankruptcy under Section 75 of the Bankruptcy Act. This judgment of dismissal was reversed by the United States Circuit Court of Appeals for the Fifth Circuit on the ground that Williams was a farmer within the meaning of Section 75 (r) and remanded to the District Court for the usual proceedings in bankruptcy under Section 75. The judgment of the Circuit Court of Appeals was entered on December 13, 1941 (Tr. 195). A Petition for Re-hearing was filed by these petitioners on the 2nd day of January, 1942 (Tr. 196), and the same was denied on January 12, 1942 (Tr. 209). Jurisdiction is invoked under Section 240(a) of the Judicial Code, as amended by Acts of February 13, 1925, c. 229, Section 1 (43 Stat. 938, 28 U. S. C. A. Section 347). *First National Bank and Trust Company v. Beach*, 301 U. S. 435, 57 Sup. Ct. 801, 81 L. Ed. 1206.

III.

Statement of the Case.

This has already been stated in the preceding petition under "Statement of the Matter Involved", page 2, which is hereby adopted and made a part of this Brief.

IV.

Specifications of Error.

1. The Honorable Circuit Court of Appeals erred in holding that Debtor Williams, whose only activities in relation to his lands consist of leasing the same under oral and written leases to third persons for cash and grain rentals and performing the usual activities of a landlord, is a farmer within the definition enumerated in Section 75 (r) of the Bankruptcy Act.

2. The Honorable Circuit Court of Appeals erred in holding that one who receives the principal part of his income from leasing lands to tenants for a consideration of cash rent or crop rent is tantamount to, or is the same as, one who receives the principal part of his income from one or more of the specific personal farming activities enumerated in Section 75 (r) of the Bankruptcy Act.

3. The Honorable Circuit Court of Appeals erred in holding that a landlord sixty-eight years of age, who maintains a residence and office in Amarillo, Texas, who up to recent years managed properties for estates and individuals, procured right-of-way for the Rock Island Railroad, bought and sold lands on commission, who owns no livestock of any description and no farming implements or implements of husbandry, but who owns an interest in a ranch of 8,156 acres in Hutchinson and Moore Counties, Texas, which is leased for cash rent to a tenant and who owns three farms,

in Potter County, Texas, Sherman County, Texas, and Texas County, Oklahoma, which are leased to tenants for share rent, and who visits his lands to see that he receives his share of the crop rent, and who discusses conditions of erosion with his tenants, and who in one instance in 1940 hired third parties to combine some wheat that was left uncut by a tenant who abandoned the premises, and who in 1938 in one isolated instance leased land to a tenant and under the terms of said lease furnished seed and fuel for a one-half interest in the crops, and who in one instance in the past five years scattered by the handful some grasshopper poison, is an "individual who is primarily bona fide personally engaged in producing products of the soil" or the receipt of the rentals that accrue under the leases on his lands makes him one "the principal part of whose income is derived from" being "primarily bona fide personally engaged in producing products of the soil", within the compass of the definition of farmer contained in Section 75 (r) of the Bankruptcy Act.

4. The Honorable Circuit Court of Appeals erred in holding in substance and effect that the primary *bona fide* personal farming activities of a tenant constituted by themselves the personal engagement in such activities by such tenant's landlord.

V.

ARGUMENT.

Summary Under Argument.

Point A: A landlord owning no livestock or poultry or farm implements whatsoever, whose only activities in relation to his lands consist of (1) leasing the same under oral and written leases to tenants for cash rental and for a percentage of crops produced by the tenant, (2) going upon and visiting his lands on occasion, (3) advising with his

tenants concerning erosion, which is the subject of one covenant of his leases, (4) in one instance, a year prior to filing his petition, contracting with a third party to combine some wheat left uncut by a tenant who abandoned the premises, (5) in one isolated instance, two years prior to filing his petition, leasing one tract of land upon terms whereby he furnished seed and fuel for one-half of the crops produced by the tenant, and (6) in one instance in the five years prior to filing his petition, scattering by the handful some grasshopper poison, is not "primarily bona fide personally engaged" in any of the farming activities enumerated in Section 75(r) of the Bankruptcy Act.

Point B: A landlord owning no livestock or poultry or farm implements whatsoever, who leases his lands to tenants for a cash rental and for a percentage of the crops produced by the tenant, who is not primarily *bona fide* personally engaged in producing products of the soil, or primarily *bona fide* personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, is not a farmer within the definition of Section 75 (r) of the Bankruptcy Act, even though the principal part of the income of such landlord be derived from such rentals.

Argument Under Point A.

The relevant Statute involved herein is Section 75 (r) of the Bankruptcy Act, which provides:

"For the purposes of this section, and section 22 (b), the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also an individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products

in unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

The decision and holdings of the Circuit Court of Appeals herein was to the effect that a landlord who leased all of his ranch lands to a tenant for cash rental and who leased all of his farm lands to tenants for a percentage of the crops produced by the tenants is one who is "primarily bona fide personally engaged in producing products of the soil", so as to qualify the landlord as a "farmer" under the first section of the definition quoted above.

This holding of the Circuit Court of Appeals is in direct conflict with the prior decision of the Ninth Circuit Court of Appeals in the case of *Shyvers v. Security First National Bank of Los Angeles*, 108 Fed. (2d) 611, (9th C. C. A.) 126 A. L. R. 674, Writ of Certiorari denied March 4, 1940, 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015. The debtor in the *Shyvers* case leased her farm properties to tenants and collected the rentals through her agents and attorneys. One of the contentions of the landlord Shyvers was that she was personally engaged in producing products of the soil, even though she did not personally plow the land and plant the seed. The Court held that her status as a landlord did not qualify her as being personally engaged within the meaning of the definition. In that connection the Court said:

"Is appellant primarily personally engaged in farming? We think she is not. She argues that she is a farmer even though she does not personally plow the ground and plant the seed. We agree that the words 'bona fide primarily personally engaged' do not mean without any assistants. However, neither do

they encompass an absentee landlord. Appellant's operations consist of collecting her rentals, rather than farming the soil."

The Fifth Circuit Court of Appeals in the present case attempted to distinguish the *Shyvers* case on the ground that the landlord Williams' activities in connection with the land consisted of something more than renting his land and collecting his rentals. An examination of the facts found in the opinion and those contained in the record reflects, however, that Williams' activities related either to the collection of his rentals or the protection of his reversionary interest in the land so that the attempted basis of distinction does not exist.

Williams' lease contracts reserved to him as a landlord one-third of the crops produced and raised by the tenants, delivered free of cost at the elevator. Williams' normal landlord activities in going upon the land during harvest time at most related to the collection of his crop rental. The two isolated instances where he ordered a tenant to return and harvest a portion of the land left unharvested, and where he hired a third person to harvest a portion of the crop which the tenant had abandoned, are instances in which the tenant had failed to perform the lease contract to deliver the landlord's portion of the crops raised after harvest to the elevator free of cost, and were not in the usual course of farming, but for the purpose of securing to him as landlord the rental considerations provided in the lease. Advising with his tenants concerning wind and water erosion involved the protection of the landlord's reversionary interest in the land and pertained to the contractual obligation of the tenant to protect the land from such erosion. Every activity mentioned concerned Williams' rights as a landlord as opposed to the actual farming activities which were conducted by the tenants with full possessory rights and full control and supervision of the

planting, cultivating and harvesting of the crops under the lease contracts.

Thus, no basis for distinction exists between the *Shyvers* and the *Williams* cases and the two are in direct conflict with one another as to what constitutes personal engagement in producing products of the soil. A similar conflict exists between the holding in the *Williams* case and the holding of the Fifth Circuit Court of Appeals in the prior case of *Baxter v. Savings Bank of Utica, N. Y.*, 92 Fed. (2d) 404. In the *Baxter* case the debtor actually managed the farm properties and had the superintendence of the farming operations, but the Court held that he was not a farmer within the meaning of the definition quoted above and that his occupation was more accurately described as "property management", although it was true he might "have performed some of the functions of a farmer".

In the present case the landlord Williams did not have even the superintendence over any of the farming operations, but occupied the pure and simple position of a landlord. The decision of the Circuit Court of Appeals in this case is for the same reason in conflict with the contemporaneous decision of the same Court in the case of *Dimmitt v. Great Southern Life Insurance Company*, 124 Fed. (2d) 40. In the *Dimmitt* case the debtor leased his lands for a cash rental and the Court held that Dimmitt's activities in leasing his lands and receiving his rentals were not such as to constitute personal engagement in any of the farming activities enumerated in the definition. There is no personal engagement by the landlord in producing products of the soil whether the land be rented to tenants for cash rent or for a percentage of the crops produced by the tenant. The distinction between the two types of leases rests in the degree of interest on the part of the landlord in the crops produced on the land by the tenant. Under a cash lease the amount of the rental consideration is deter-

mined and after that determined sum is paid the landlord has no personal interest in the crops produced during the demised term. Under the crop lease the amount of the rental consideration is undetermined and the landlord has a continuing personal interest in observing the condition of the crops produced by the tenant until the landlord's percentage interest is delivered to his credit in the elevator, although the landlord performs no function or activity in regard to such production. Thus, no basis for distinction exists between the *Dimmitt* case and the *Williams* case, and the two are in direct conflict with each other.

These conflicts should be resolved by this Court. The superficial distinction attempted by the Fifth Circuit Court of Appeals is not based on substantial differences in the material facts in the cases and the refusal of this Court to take jurisdiction in this case would leave the status of landlords under Section 75 of the Bankruptcy Act in intolerable confusion. The importance of finally settling this Federal question is fully set forth in Reason III in the Petition and need not be further elaborated upon in this Brief.

Argument Under Point B.

The Circuit Court of Appeals in this case found as a fact that the principal part of the landlord Williams' income was derived from the rental of his farm properties. While the Circuit Court of Appeals apparently based its decision on the conclusion that debtor Williams was personally engaged in the production of products of the soil, it might be contended under this finding that the judgment could be supported on the theory that Williams was a farmer within the second portion of the definition contained in Section 75 (r), which reads, "or the principal part of whose income is derived from any one or more of the foregoing operations." If such was the basis of the judgment of the Circuit Court of Appeals in this case, such judgment is in

direct conflict with the opinion of the Ninth Circuit Court of Appeals in the case of *Shyvers v. Security First National Bank of Los Angeles*, 108 Fed. (2d) 611 (9th C. C. A.) 126 A. L. R. 674, Writ of Certiorari denied March 4, 1940, 309 U. S. 668, 60 Sup. Ct. 608, 84 L. Ed. 1015. In the *Shyvers* case the debtor received the principal part of her income from leasing farm lands to tenants who performed farming operations thereon. The Court held that the landlord in such case was not a "farmer" within the second portion of the definition quoted above. The Court's holding appears from the following quotation from the opinion:

"Next, it is necessary to consider whether or not the appellant is a 'farmer' under the second portion of the definition, as one 'the principal part of whose income is derived from any one or more of the foregoing operations'.

"It should be noted in particular that the Act does not define a farmer as one whose principal income is derived from farm properties; but the definition instead refers to 'the foregoing operations.'

"What are the 'foregoing operations'? An examination of the statute will disclose that each 'foregoing operation' is meticulously required to be a personal one. We conclude that to come within this subdivision, the debtor must personally be engaged in farming. It is not enough to own farm lands which he or she leases to others who operate them, while the debtor resides across seas. And this appears to be the very spirit of the law, which was enacted during a period of profound depression among the farmers of this country, the Act itself providing that it is one of emergency."

No possible distinction in this regard can be made between the *Williams* and the *Shyvers* cases, and the conflict between these decisions of the Fifth and Ninth Circuit Courts of Appeal should be resolved by this Court so that the large class of individuals who occupy the position of landlords receiving the principal part of their income from leasing farm properties and their creditors may know their status

under the Frazier-Lemke Act. The importance of finally determining this question of the construction of this most important Federal Statute is fully set forth under Reason III in the petition and need not be elaborated upon in this Brief.

Conclusion.

It is respectfully submitted that by reason of the irreconcilable conflict between the Circuit Courts of Appeal and the importance of the Federal question involved concerning the proper construction of Section 75 (r) of the Bankruptcy Act with respect to the inclusion thereunder of landlords as "farmers", the Supreme Court of the United States should exercise its jurisdiction and grant a Writ of Certiorari under the seal of this Court, directed to the United States Circuit Court of Appeals, Fifth Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings in said Circuit Court had in the case entitled and numbered on its docket, No. 9894, *Joseph Lankston Williams, Debtor, Appellant, v. Great Southern Life Insurance Company, et al., Appellees*, to the end that this cause may be reviewed and determined by this Court and that the judgment herein of the United States Circuit Court of Appeals, Fifth Circuit, be reversed and the judgment of the United States District Court, Northern District of Texas, Amarillo Division, be affirmed.

Respectfully submitted,

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